From: "Collins, Francis (NHGRI)" <francisc@exchange.nih.gov>
To: varmus@nih.gov
Subject: FW: Genbank-Celera
Date: Wed, 2 Jun 1999 19:30:39 -0400
MIME-Version: 1.0

bounced the first time...

-----Original Message-----
From: Collins, Francis (NHGRI)
Sent: Wednesday, June 02, 1999 6:09 PM
To: Varmus, Harold; Freire, Maria (OD)
Subject: FW: Genbank-Celera

Hi Harold and Maria,

Attached please find a message from Michael Morgan of the Wellcome Trust. He has studied the draft Celera/NCBI MOU, and as you can see he continues to have lots of concerns about it. I have offered some brief responses (for your eyes only) in CAPs. I believe some of Michael's objections reflect a certain degree of naivete about what data is already present in GenBank/EBI/DDBJ, but others represent more substantive philosophical concerns that don't have easy answers.

As I have mentioned to Harold, Michael's intrinsic distaste for this MOU makes it seems unlikely that Wellcome will go along unless there is a personal contact made between Harold and Mike Dexter.

You will note that Michael is asking permission to share this draft document with EBI, and with John Sulston, and with the Wellcome Trust Governors. My sense is that if this MOU is not going to fly, it won't help us much to have it further distributed and have others howl about it, or have it fall into the hands of the press.

So what to do? Options seem to include:

1) Hold off showing this to others, but press ahead to seek Mike Dexter's OK -- would require a personal contact from Harold, and it sounds as if he's preoccupied until after next week.

2) Put the whole thing on hold, pending some further evidence of how Celera is going to live up to their end of the Drosophila MOU. That should begin to become clear in July. If they bail out on that document (and there's no concrete evidence that they will, just rumors), there isn't much point in wasting any more time on crafting an agreement on human sequence.

Your thoughts?

FC

P.S. I have been invited to have lunch with Lord Sainsbury, the British Minister for Science, on June 11. The topic is "gene patenting and the use of information emerging from the genome sequencing revolution."

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-----Original Message-----
From: M.Morgan@wellcome.ac.uk [mailto:M.Morgan@wellcome.ac.uk]
Sent: Wednesday, June 02, 1999 6:35 AM
To: fc23a@nih.gov
Cc: m.dexter@wellcome.ac.uk; ari.patrinos@oer.doe.gov

6/4/99

Subject: Genbank-Celera

Greetings from Michael Morgan

Dear Francis,

I have briefed Mike Dexter about the MOU, and he promised to discuss it with me as soon as possible: our major policy meeting of the year is next week and he (and I) are a little pre-occupied. (This is his first as Director.)

In the meantime I have a few points you might wish to consider/address.

1. The document would make it much harder to win the PR war with Craig Venter, because he could argue that (1) all my data is in GenBank, (2) GenBank, run by public National Library of Medicine of the National Institutes of Health, is the public domain, therefore (3) all my data is in the public domain. The legally correct description that some of the Celera information on GenBank is in public domain (if it is nonproprietary, as determined solely by Celera) and some of it is not in the public domain (if it is proprietary) will get lost as noise. [ON THE OTHER HAND, THE PR VALUE TO NIH OF HAVING OFFERED A CONCRETE MECHANISM FOR DATA SHARING IS NOT NEGLIGIBLE. THAT VALUE APPLIES SOMEWHAT DIFFERENTLY IF THE MOU IS ACCEPTED OR REJECTED, BUT IS POTENTIALLY POSITIVE IN EITHER CASE.]

2. If the Celera information is mixed up with all other information, then the users will be unable to function effectively with respect to what is really public and what is really proprietary. This will cause real problems for researchers who want to use only public information or whose collaborators insist on using only public information, so that Celera does not have blocking IPR on the inventions of the researchers. [THAT OF COURSE IS ALREADY THE CASE, THERE IS LOTS OF DATA IN GENBANK/EBI/DDBJ THAT HAS INTELLECTUAL PROPERTY ATTACHMENTS. THAT ISN'T SUPPOSED TO BE TRUE FOR THE "HIGH THROUGHPUT DIVISION" INTO WHICH GENOME CENTERS DEPOSIT LARGE SCALE GENOMIC SEQUENCE, HOWEVER.]

3. Given the delays in patent filings becoming public, there will be long delays before any researcher will know whether he/she is using public or non-public information. In addition, the claims by Celera that it will patent gene families (whatever the expression means) increases this lack

of
clarity. This exacerbates the problems in paragraph 2. [SEE ABOVE, THIS IS ALREADY HAPPENING. AS I UNDERSTAND IT, UPON ISSUANCE OF A U.S. PATENT WHICH INCLUDES A SEQUENCE, THAT IS REQUIRED TO BE DEPOSITED IN GENBANK.]

4. If NIH wants to put proprietary Celera information in GenBank, then it
should negotiate limitations on the IPRs of Celera, as recommended by the
NIH's research tools task force in July 1998, including in particular NO reach through rights on inventions using GenBank. The task force report should be reviewed carefully to see what other issues the draft MOU raises. [GENBANK CERTAINLY MAKES NO EFFORT NOW TO POLICE THE PRESENCE OF REACHTHROUGH IP ON SEQUENCES IT STORES. BUT A HIGHLY VISIBLE AGREEMENT WITH CELERA COULD CERTAINLY RAISE THE QUESTION OF NIH CONSISTENCY.]

5. Urgent investigation is needed of the technical issues of whether this
can be done, including the implications of the technical solutions (e.g. if
the Celera proprietary information is kept separate from truly public information, then the researcher and his/her collaborators could decide whether to take the risks described above).
{Could I now have your agreement to raise this issue with the EBI? So far
I have been discrete and have only been able to elicit woolly responses.}

6. The MOU represents a threat not only to academic researchers (our major
concern) but also to the biotech and pharmaceutical collaborators with or
funders of academic researchers. Thus any proposition by NIH that the Government is encouraging joint efforts with private enterprise need to be
seen as being potentially anticompetitive for the rest of the sector.

7. I still do not comprehend the justification for a special deal for Celera Genomics itself. If the NIH believes that there are benefits for biomedical research in negotiating arrangements with the private sector for
including proprietary information in public databases, then it should determine the basis on which this should happen, taking into account the kinds of issues described above, and then make the terms available to the
whole private sector, including Celera, Incyte, Genset, and others.
[THIS IS A REASONABLE POINT -- BUT THE FACT REMAINS THAT NO OTHER PRIVATE SECTOR ORGANIZATION IS PROPOSING TO MAKE LARGE AMOUNTS OF HUMAN
GENOME SEQUENCE PUBLICLY ACCESSSIBLE.]

8. A final technical legal point is that there is no such thing as Celera Genomics Corporation. There is a Celera Genomics Group, which is one of the two business units of the listed company PE Corporation (formerly Perkin-Elmer Corporation).

The issue therefore is not one of technical legal permissibility, but of practical wisdom: Does this arrangement benefit the public interest? [EXACTLY!!] On the positive side, it will get privately-generated data into a public database where it can be readily accessed. Even if there may be intellectual property rights that keep the data from being used for certain commercial purposes, it can still be used for purposes such as review of newly identified sequences or statistical analysis of the genome. [GOOD, I'M GLAD THIS FEATURE HASN'T BEEN LOST.] On the negative side, the MOU represents a form of public-sector acquiescence in the privatization of genetic information and leaves intact whatever rights Celera may have to use its data as a bargaining chip against products developed by other firms that might use sequences it supplied. Moreover, it may make it harder to hold the line against anyone, public or private, who wants to wait longer than 24 hours before depositing data. Doesn't it complicate life for us since we will be independently developing most of the same data and keeping it in the pubic domain?

My bottom line is still the question: what is in this for the public sequencing effort? Why should genbank/EBI go 'cap in hand' to Celera? My greatest concern is that this will backfire on the public effort. It will be a publicity coup for Celera and will probably demoralise our scientists. [IF TRUE, THAT WOULD BE A SERIOUS BLOW -- I HAVE NOT DISCUSSED THIS MOU WITH THE G5, AND WILL NOT, UNLESS IT LOOKS AS IF THERE IS A REAL CHANCE IT WILL GO FORWARD.] I have not spoken to John Sulston, nor Martin Bobrow or any other Governor, but I would like your agreement to bring them on board soon.

Best regards

Michael

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